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DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense (DoD) Science and Technology Reinvention Laboratory (STRL)

Personnel Demonstration Project

AGENCY: Office of the Under Secretary of Defense for Research and Engineering (OUSD(R&E)), DoD.

ACTION: This notice provides a new authority to all STRL Personnel Demonstration Projects.

SUMMARY: STRLs with published demonstration project plans may implement the flexibility of a supplemental pay provision based on criteria as defined by the STRL director.

DATES: Implementation of this Federal Register notice will begin no earlier than [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

1. Background

Title 10 United States Code (U.S.C.) 4121 authorizes the Secretary of Defense, through the Office of the Under Secretary of Defense for Research and Engineering (OUSD(R&E)), to exercise the authorities granted to the Office of Personnel Management (OPM) under 5 U.S.C. 4703 to conduct personnel demonstration projects at DoD laboratories designated as Science and Technology Reinvention Laboratories (STRs). All STRs authorized pursuant to 10 U.S.C. 4121 may use the provisions described in this Federal Register Notice (FRN). STRs implementing these flexibilities must have an approved personnel demonstration project plan published in an FRN and fulfill any collective bargaining obligations. Each STR will establish internal operating procedures as appropriate.

The 21 current STRs are:

- Air Force Research Laboratory
- Joint Warfare Analysis Center

- Army Futures Command
- Army Research Institute for the Behavioral and Social Sciences
- U.S. Army Combat Capabilities Development Command's Armaments Center
- U.S. Army Combat Capabilities Development Command's Army Research Laboratory
- U.S. Army Combat Capabilities Development Command's Aviation and Missile Center
- U.S. Army Combat Capabilities Development Command's Chemical Biological Center
- U.S. Army Combat Capabilities Development Command's Command, Control, Communications, Computers, Cyber, Intelligence, Surveillance, and Reconnaissance Center
- U.S. Army Combat Capabilities Development Command's Ground Vehicle Systems Center
- U.S. Army Combat Capabilities Development Command's Soldier Center
- U.S. Army Engineer Research and Development Center
- U.S. Army Medical Research and Development Command
- U.S. Army Space and Missile Defense Command's Technical Center
- Naval Air Systems Command Warfare Centers
- Naval Facilities Engineering Command Systems Engineering and Expeditionary Warfare Center
- Naval Information Warfare Centers, Atlantic and Pacific
- Naval Medical Research Center
- Naval Research Laboratory
- Naval Sea Systems Command Warfare Centers
- Office of Naval Research

2. Summary of Comments

On May 12, 2022, the Department of Defense published a notice (87 FR 29134-29137) concerning this new flexibility, for a 30-day public comment period. The public comment period ended on June 13, 2022. One commenter posed several questions concerning safeguards to ensure equitable administration of the supplemental pay authority. Specifically, the commenter inquired about how supplemental pay determinations will be made, how employees will be notified about

opportunities to receive such pay, and who will review and evaluate the appropriateness of the determinations. In addition, the commenter inquired about whether and how a disparate impact analysis would be conducted to determine whether the supplemental pay flexibility results in unintentional discrimination based on race, gender, age, or another protected category.

In response, the Department notes that the criteria in Section II.A. concerning supplemental pay rate determinations are based on the criteria in 5 Code of Federal Regulations (CFR) 530.304. STRL directors will evaluate the need for establishing, increasing, decreasing, or discontinuing supplemental pay rate schedules, using these factors. The frequency and results of such evaluations will be documented in Internal Operating Procedures. As provided in the individual STRL personnel demonstration project plans and DoD instructions, STRL personnel demonstration projects are continually evaluated by external offices. Along with information about other STRL flexibilities, information about the supplemental pay flexibility will be collected and analyzed to determine whether it is a model personnel practice. In addition, each STRL may conduct internal evaluations to ensure its flexibilities are appropriately administered.

Additional changes were made to clarify which positions within the STRL are eligible for use of this flexibility. Finally, the provision concerning treatment of supplemental pay as locality pay for purposes of determining basic pay was removed.

3. Overview

I. Introduction

A. Purpose

Some STRLs have adopted supplemental pay flexibilities that are based on the OPM special salary rate tables that provide for higher salaries than the General Schedule (GS) tables. This supplemental pay flexibility permits STRLs to independently establish supplemental pay rates based on market conditions to help STRLs attract, recruit, and retain a high caliber workforce. Competing with private sector compensation is particularly challenging, especially in emerging mission areas such as hypersonics, autonomy, cybersecurity, and data science.

B. Required Waivers to Law and Regulation

Waivers and adaptations of certain title 5 U.S.C. and title 5 CFR provisions are required only to the extent that these statutory and regulatory provisions limit or are inconsistent with the actions authorized under these demonstration projects. Title 10 U.S.C. 4121(a)(5) states that the limitations on pay fixed by administrative action in 5 U.S.C. 5373 do not apply to the STRL demonstration project authority to prescribe salary schedules and other related benefits. Appendix A lists waivers needed to enact authorities described in this FRN. Nothing in this plan is intended to preclude the STRLs from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this FRN.

C. Participating Organizations and Employees

All DoD laboratories designated as STRLs pursuant to 10 U.S.C. 4121(b), as well as any additional laboratories designated as STRLs by the Secretary of Defense, through the USD(R&E), with approved personnel demonstration project plans published in FRNs may use the supplemental pay rate provisions described in this FRN. The supplemental pay flexibility may be applied to all STRL employees included within the personnel demonstration project pursuant to subsection (c) of 10 U.S.C. 4121. It may be necessary to review written agreements with respect to the project, between the STRL and a labor organization which is accorded exclusive recognition under 5 U.S.C. 7101 et seq., to determine whether certain STRL employees (e.g., employees whose pay is set in accordance with 5 U.S.C. 5332 or the “General Schedule”) are included in the project and are therefore eligible for supplemental pay using this authority. Prevailing rate employees (as defined by section 5342(a)(2) of title 5 U.S.C. and senior executives (as defined by section 3132(a)(3) of such title) are not included within personnel demonstration projects and may not receive supplemental pay pursuant to this FRN.

II. Personnel System Changes

A. Description and Implementation

STRL directors may establish supplemental pay rates to be paid bi-weekly, as other pay, for those positions which warrant higher compensation than that provided by the established broadband salary ranges, STRL staffing supplements or differentials, or other recruitment or retention authorities. The STRL director may establish supplemental pay rates by occupational series, specialty, competency, broadband level, and/or geographical area. In establishing such rates, the STRL director may consider: rates of pay offered by non-Federal or other alternative pay system employers that are considerably higher than rates payable by the STRL; the remoteness of the area or location involved; the undesirability of the working conditions or nature of the work involved; evidence that the position is of such a specialized nature that very few candidates exist; numbers of existing vacant positions and the length of time vacant; numbers of employees who have voluntarily left positions; evidence to support a conclusion that recruitment or retention problems likely will develop (if such problems do not already exist) or will worsen; consideration of use of other pay flexibilities as well as the use of non-pay solutions; or any other circumstances the STRL director considers appropriate. Documentation of the determination will be maintained by the STRL.

This supplemental pay is in addition to any other pay, such as locality-based comparability payments authorized under 5 U.S.C. 5304 and may result in maximum salary above Level IV of the Executive Schedule but may not exceed Level I of the Executive Schedule.

The STRL director has an ongoing responsibility to evaluate the need for continuing payment of the supplemental pay and shall terminate or reduce the amount if conditions warrant. Conditions to be considered include: changes in labor-market factors; whether the need for the services or skills of the employee has decreased such that it is no longer necessary to incentivize employee recruitment or retention; and budgetary considerations. The reduction or termination of the payment is not considered an adverse action and may not be appealed or grieved. The applicant or employee will sign a statement of understanding outlining that the supplement may be reduced or terminated at any time based on conditions as determined by the STRL director. The documentation of the determination will be maintained by the STRL.

B. Evaluation

Procedures for evaluating this authority will be incorporated into the STRL demonstration project evaluation processes conducted by the STRLs, OUSD(R&E), or Component headquarters, as appropriate.

C. Reports

STRLs will track and provide information and data on the use of this authority when requested by the Component headquarters or OUSD(R&E).

III. Required Waivers to Law and Regulations

Appendix A. Waivers to Title 5, U.S.C.

<u>Title 5, United States Code</u>	<u>Title 5, Code of Federal Regulations</u>
5 U.S.C. 5303(f) – Annual Adjustments to pay schedules. Waived to allow pay (disregarding comparability pay) to exceed level V of the Executive Schedule.	5 CFR Part 530, subpart B – Aggregate Limitation on Pay. Waived in its entirety to allow STRL director to authorize supplemental pay as defined in this FRN.
5 U.S.C. 5304(g)(1) – Locality-based comparability payments. Waived to allow pay in excess of level IV of the Executive Schedule.	5 CFR Part 530.203 – Administration of aggregate limitation on pay. Waived to allow pay and allowances, differentials, bonuses, awards, or other similar cash payments, including supplemental pay in excess of level I of the Executive Schedule.
5 U.S.C. 5304(h)(1)(D) – Locality-based comparability payments. Waived to allow pay in excess of level IV of the Executive Schedule.	5 CFR Part 531.606(a) – Maximum limits on locality rates. Waived to allow pay in excess of level IV of the Executive Schedule.

<p>5 U.S.C. 5305 – Special Pay Authority.</p> <p>Waived in its entirety as to allow the STRL director to establish supplemental pay and to allow pay in excess of level IV of the Executive Schedule.</p>	<p>5 CFR Part 531.606(b)(3) – Maximum limits on locality rates. Waived to allow pay in excess of level IV of the Executive Schedule.</p>
<p>5 U.S.C. 5307 – Limitation on certain payments. Waived to allow pay and allowances, differentials, bonuses, awards, or other similar cash payments, including supplemental pay in excess of Level I of the Executive Schedule.</p>	<p>5 CFR Part 531.608 – Relationship of locality rates to other pay rates. Waived to apply the provisions of this FRN.</p>
<p>5 U.S.C 5373 – Limitation on pay fixed by administrative action. Waived to the extent necessary to allow basic pay and supplemental pay to exceed level IV of the Executive Schedule.</p>	
<p>5 U.S.C. 5547 – Limitation on premium pay. Waived to the extent necessary to allow basic pay and supplemental pay to exceed level IV of the Executive Schedule.</p>	<p>5 CFR Part 550.105 – Premium Pay Biweekly maximum earnings limitation. Waived to the extent necessary to allow basic pay and supplemental pay to exceed level IV of the Executive Schedule.</p>

Appendix B. Authorized STRLs and Federal Register Notices

STRL	Federal Register Notice
Air Force Research Laboratory	61 FR 60400 amended by 75 FR 53076
Joint Warfare Analysis Center	85 FR 29414
Army Futures Command	Not yet published
Army Research Institute for Behavioral and Social Sciences	85 FR 76038
U.S. Army Combat Capabilities Development Command's Armaments Center	76 FR 3744
U.S. Army Combat Capabilities Development Command's Army Research Laboratory	63 FR 10680
U.S. Army Combat Capabilities Development Command's Aviation and Missile Center	62 FR 34906 and 62 FR 34876 amended by 65 FR 53142 (AVRDEC and AMRDEC merged)
U.S. Army Combat Capabilities Development Command's Chemical Biological Center	74 FR 68936
U.S. Army Combat Capabilities Development Command's Command, Control, Communications, Cyber, Intelligence, Surveillance, and Reconnaissance Center	66 FR 54872
U.S. Army Combat Capabilities Development Command's Ground Vehicle Systems Center	76 FR 12508
U.S. Army Combat Capabilities Development Command's Soldier Center	74 FR 68448
U.S. Army Engineer Research and Development Center	63 FR 14580 amended by 65 FR 32135
U.S. Army Medical Research and Development Command	63 FR 10440
U.S. Army Space and Missile Defense Command's Technical Center	85 FR 3339
Naval Air Systems Command Warfare Centers	76 FR 8530
Naval Facilities Engineering Command Systems Engineering and Expeditionary Warfare Center	86 FR 14084
Naval Information Warfare Centers, Atlantic and Pacific	76 FR 1924
Naval Medical Research Center	Not yet published
Naval Research Laboratory	64 FR 33970
Naval Sea Systems Command Warfare Centers	62 FR 64050
Office of Naval Research	75 FR 77380

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